



RESOLUTION

AUTHORIZING THE LEASE OF CITY PROPERTY TO HALE KIPA, INC. FOR SPECIAL NEEDS HOUSING UNDER SECTION 28-3.5, REVISED ORDINANCES OF HONOLULU (ROH).

WHEREAS, on January 9 and 16, 2020, the City and County of Honolulu published notice of the issuance of a Request for Proposals ("RFP") for the lease of two (2) City-owned properties to provide housing or human services for persons with special needs; and

WHEREAS, a proposal was received for the property located at 91-1002 Apa'a Street, Ewa Beach, Hawai'i 96706, TMK: 9-1-065:001 (the "City Property") by the current operator of this property for special needs youth and young adults, by the February 4, 2020 deadline; and

WHEREAS, an evaluation of the proposals was conducted by staff of the Department of Community Services, which made recommendations for selection; and

WHEREAS, as a result of the RFP process, the City selected Hale Kipa, Inc., to provide group home accommodations for youth and young adults aged 18-22; and

WHEREAS, in accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on June 23, 2020 identifying the proposals for the City-owned properties and selection of the nonprofit agencies for the public record; and

WHEREAS, in accordance with Section 28-3.5(g), ROH, a public hearing was held on June 22, 2020 on the lease of the City Property for nominal rent; and

WHEREAS, the Department of Community Services has made the certification as required by Section 28-3.5(g), ROH, to support a lease for nominal rent; and

WHEREAS, the City desires to lease the property to Hale Kipa, Inc. in accordance with Section 28-3.5, ROH; and

WHEREAS, the Council finds that it is in the public interest to lease the City Property to Hale Kipa, Inc.; now, therefore,



RESOLUTION

BE IT RESOLVED by the Council of the City and County of Honolulu that:

1) The lease of the City Property to Hale Kipa, Inc. at a nominal rent of \$1,200 per year for a period of five (5) years, is hereby approved in substantially the form attached hereto as Attachment A, subject to any additions, deletions, or amendments to any terms or conditions of the lease by the City Council.

2) The Mayor, the Director of the Department of Budget and Fiscal Services, or the Director of the Department of Community Services is hereby authorized to execute (a) the lease in substantially the form attached hereto as Attachment A, subject to any additions, deletions, or amendments to any terms or conditions of the lease by the City Council; and (b) any incidental or related documents to carry out the transactions described above (including, but not limited to, amendments to the lease), as long as such incidental or related documents do not increase either directly or indirectly the financial obligation of the City; and

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to Nelson H. Koyanagi, Jr., Director of the Department of Budget and Fiscal Services, and Pamela A. Witty-Oakland, Director of the Department of Community Services.

INTRODUCED BY:

 (br)

DATE OF INTRODUCTION:

JUL 9 2020

Honolulu, Hawaii

Councilmembers

ATTACHMENT A

FORM OF LEASE

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

City and County of Honolulu
Department of Community Services
925 Dillingham, Suite 200
Honolulu, Hawaii 96817

NO. OF PAGES:

PROPERTY DESCRIPTION

91-1002 Apa'a Street
Ewa Beach, Hawai'i 96706

**DOCUMENT NO.
TRANSFER CERTIFICATE OF
TITLE NO:**

Land Court () Regular () Double ()

Tax Map Key No. 9-1-065:001

LEASE

THIS LEASE ("Lease") is between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, ("City"), and HALE KIPA, INC., a Hawaii nonprofit corporation, the principal place of business and mailing address of which is 615 Pi'ikoi Street, Suite 203, Honolulu, Hawai'i 96814, ("Lessee").

In consideration of the respective rights and obligations stated below, the City and Lessee agree as follows:

1. **DEMISE AND DESCRIPTION OF PROPERTY.** The City, in consideration of the rent to be paid by Lessee and of the terms stated below to be performed by Lessee, leases to Lessee, and Lessee accepts, all of the real property described in Exhibit A and improvements thereon (the "Property"). Lessee has inspected the Property and finds the Property in good condition and accepts the Property in its present condition, AS IS, WHERE IS AND WITH ALL FAULTS, without warranty, guaranty, liability, or

representation whatsoever, express or implied, oral or written, on the part of the Lessor, or any Person on behalf of Lessor, regarding the Property or matters affecting the Property, including but not limited to the following:

- A.. Physical Condition. The physical condition of the Property, including the quality, nature, adequacy and physical condition of (a) the land, including any systems, facilities, access, and/or landscaping; (b) the air, soils, geology, topography, drainage, and groundwater, (c) the suitability of the land for construction of any future Improvements or any activities or uses that Lessee may elect to conduct on the land; or (d) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the land for building any other purpose;
- B. Improvements. The quality, nature, adequacy and physical condition of existing Improvements, including, without limitation, the structural elements, seismic safety, engineering characteristics, foundation, roof, systems, infrastructure, facilities, appliances, appurtenances, access, landscaping, and/or parking facilities.
- C. Title. The nature and extent of any recorded right of way, lease, possession, lien, encumbrance, license, reservation or other title condition of record as of the Commencement Date affecting the Property including, without limitation, the existence of any easements, rights of ways or other rights across, to or in other properties that might burden and/or benefit the Property; provided however, that Lessor represents and warrants to Lessee that it owns fee simple title to the land;
- D. Compliance. The development potential of the Property and /or the zoning, land use, or other legal status of the Property, or compliance with any public or private restrictions on the use of the Property, as the same are in effect as of the Commencement Date or may be hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance of the Property with any applicable laws;
- E. Hazardous Substances. The presence or removal of Hazardous Substances on, in, under or about the Property or any adjoining or neighboring property.
- F. Economic Feasibility. Economic conditions or projections, development potential, market data, or other aspects of the economic feasibility of the Property and/or the business Lessee intends to conduct on the Property.
- G. Utilities. The availability, existence, quality, nature, adequacy and physical condition of utilities serving the Property;
- H. Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Property for any particular purpose.
- I. Boundaries. The boundaries of the Property, the location of any improvements on the land and/or the existence of any encroachment onto or from any adjacent lands;
- J. Access. Access to the Property, including from or through any particular route; and
- K. Other matters. Any matter whatsoever not referenced above that pertains to the Property.

2. **TERM AND RENTAL.** To have and to hold the Property together with the rights, easements, tenements, privileges, and appurtenances, unto Lessee for the term of five (5) years commencing on the first day of _____ (the "Commencement Date") and expiring on the day prior to five (5) years from the Commencement Date, unless terminated earlier as stated below ("Term"). Lessee will pay the City monthly rent of \$100.00 for the Property to be paid on the first day of each month during the Term. If not for a full month, rent shall be prorated accordingly.

3. **QUIET ENJOYMENT.** Upon payment of the rent and upon performance of the terms of this Lease by Lessee, Lessee shall peaceably hold and enjoy the Property for the Term without hindrance or interruption by the City or any other person or persons lawfully claiming by, through, or under the City, except as may be stated below.

4. **AMENDMENTS TO FACILITATE FINANCING.** This Lease and any other documents relating to the Property may be amended to comply with reasonable changes requested by a permanent lender financing the Property, if approved by the City, in advance. It is expressly understood and agreed that the City reserves the right to reject any request for an amendment of this Lease if the proposed amendment will adversely affect the City's rights in the Property.

5. **USE AND TRANSFER OF PROPERTY.** The Property shall be used exclusively as a group home for special needs youth and/or young adults aged 18-22 years old transitioning out of homelessness ("Project") in accordance with the Request for Proposals, as published August 2019 and re-published January 2, 2020 and Lessee's proposal dated February 4, 2020, all of which are incorporated herein by reference. Lessee covenants that except as stated in this Agreement, it will not, sell, assign, convey, sublease, mortgage, encumber or transfer Lessee's interest in this Lease or relinquish possession of any portion of the Property, without the prior written consent of the City.

In addition to the revision stated in section 32.F. below, if the prior approval of the City is required by provisions of this instrument, the City will promptly review the request, will give Lessee specific reasons why as request may be denied and will work with Lessee to attempt to remedy the reasons for a denial.

A. Compliance with Federal HOME Investment Partnerships Program (HOME) Requirements. Lessee shall comply with all HOME requirements applicable to Lessee's use of and the activities on the Property, including the regulations set forth in 24 Code of Federal Regulations (CFR) Part 92 and related administrative requirements and authoritative guidance, as the same may from time to time hereafter be amended. It is understood that citations herein to the Code of Federal Regulations shall include any amendments thereto, and any recodified or successor regulations.

1. **HOME Use and Affordability Restrictions.** Lessee shall comply with HOME use and affordability restrictions applicable to Lessee's use of and the activities on the Property. The use of, and activities upon the Property shall at all times meet the applicable HOME criteria.
2. **Prohibited Activities.** The Property shall not be used to implement any of the prohibited activities or fees set forth in 24 CFR §92.214.
3. **Inspections and Monitoring.** During normal business hours, all of Lessee's records relating to the Property shall be made available for examination by the City, HUD, and the Comptroller General of the United States and/or their representatives.
4. **Program Income.** Lessee shall comply with HOME program income requirements applicable to the Property and the Project, including, but not

limited to, those set forth at 24 CFR §92.503. Lessee shall report all program income applicable to the Premises and the Project to the City, and shall pay all program income that it receives from the Property or the Project to the City within (30) days following the calendar quarter in which the program income is received.

5. **Use Restriction Period.** The obligations set forth in this Section 5.1 shall remain in effect from the Commencement Date until years thereafter (the "Use Restriction Period"). The Use Restriction Period shall be extended for any period of time that the City, with the concurrence of HUD, or HUD determines that the Lessee has not complied with the terms of this Lease. The length of the extension shall correspond to the time period during which the Lessee was found to be noncompliant with the terms of this Lease.
6. **Recordkeeping.** Lessee shall maintain all records applicable to Lessee's use of and the activities on the Property and required to be maintained pursuant to all applicable HOME program requirements, including, but not limited to, 24 CFR §92.508.
7. **Record Retention.** Lessee shall maintain all records applicable to Lessee's use of and the activities on the Property required to be maintained pursuant to HOME program requirements, for the time periods prescribed by such requirements.
8. **Reporting Requirements.** Lessee shall comply with all HOME program reporting requirements applicable to Lessee's use of an activities on the Property, and shall provide any such reports reasonably required by the City in furtherance of the City's compliance with HOME program requirements.
9. **Environmental Requirements.** Lessee shall comply with all environmental laws, regulations, and review requirements, as may be applicable to Lessee's use of and activities on the Property pursuant to HOME program requirements.
10. **Indemnity.** Lessee agrees to defend, indemnify, and hold harmless City from any demands, claims, fines, penalties, lawsuits, orders, or other enforcement or administrative actions alleging noncompliance with HOME requirements, including any demands for repayment of HOME funds used to acquire the Property, arising from the acts or omissions of Lessee, its employees, officers, directors, agents, contractors, subcontractors or representatives, or from the use of or activities upon the Property during the Term.
11. **Lead-Based Paint (24 CFR §92.355).** Lessee agrees that the Project shall be subject to HUD Lead-Based Paint Regulations at 24 CFR §92.355, including, but not limited to, the implementing regulations at 24 CFR Part 35, Subparts A, B, J, K, M and R. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening

for children under seven. The notice should also point out that if lead-based paint is found on the Property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to the property, paint testing, risk assessment, treatment and/or abatement may be conducted. Lessee further agrees that any repair, renovation or painting that disturb lead-based paint in "target housing", as that term is defined in the Toxic Substances Control Act (TSCA), section 401 or in a "child-occupied facility", as that term is defined in EPA regulations implementing said Act, shall be carried out in strict compliance with those implementing regulations, which are set forth in 40 CFR Part 745, beginning 40 CFR §745.80. These regulations require, among other things, the use of certified renovators, dust sampling technicians, and renovation firms.

12. Nondiscrimination. Lessee shall comply with all applicable requirements set forth in 24 CFR §92.350 – Other Federal requirements and nondiscrimination.

B. Compliance with Group Home Management Agreement. Lessee shall manage the Project and provide services under this Lease pursuant to the terms of the Group Home Management Agreement attached hereto as Exhibit B, which shall not be modified without the prior written consent of the City.

6. PAYMENT OF TAXES AND ASSESSMENTS. Lessee shall pay, before the same become delinquent, all real property taxes and assessments for which the Property is liable during the Term, whether payable by the City or Lessee. Taxes and assessments shall be prorated between the City and Lessee as of the dates of commencement and expiration of the Term. If any assessment is made under any betterment or improvement law which is payable in installments, Lessee shall pay only such installments, together with interest, which are due and payable during the Term.

7. PAYMENT OF RATES AND OTHER CHARGES. During the Term, Lessee shall pay all charges for electricity, gas, refuse collection, telephone, sewage disposal, water, and all other utilities or services pertaining to the Property, before the charges are delinquent.

8. OBSERVANCE OF LAWS AND COVENANTS. Lessee shall at all times keep the Property in a clean and sanitary condition, shall observe all laws, ordinances, rules and regulations now or hereafter made by any governmental authority which are applicable to the Property and will observe all covenants and restrictions affecting the Property.

Lessee shall comply with all City, State, and Federal laws, rules, and regulations now or hereafter made by any governmental authority which are applicable to the Property and will observe all covenants and restrictions affecting the Property.

9. REPAIR AND MAINTENANCE. Lessee shall at all times during the Term, at its own expense, substantially repair, maintain, and keep the Property in good order and condition.

10. IMPROVEMENTS REQUIRED BY LAW. Subject to Section 11 below, Lessee shall build, maintain, and repair, at its sole expense, all improvements which may be required by law in connection with its use of the Property.

11. CONSTRUCTION OF IMPROVEMENTS. Lessee will not construct any structure or other improvements on the Property with an aggregate value greater than \$1,000, alter the Property, or place any signs on the Property, without the prior written consent of the City.

12. WASTE AND UNLAWFUL USE. Lessee will not make or suffer any strip, waste, or unlawful, improper, or offensive use of the Property.

13. INSPECTION. The City and its agents may enter and inspect the Property at all reasonable times during the Term. Subject to the provisions of Sections 10 and 11 above, Lessee shall, at its own expense, repair all defects in the Property within 30 days after the City gives written notice thereof to Lessee, or shall, if any repair cannot reasonably be completed within 30 days, commence such repair within that time period and act with diligence until the repair is completed. If Lessee shall fail to commence or complete the repairs within the period provided above, the City may make such repairs without prejudice to any remedies available to the City under this Lease or at law for Lessee's default of its obligations under this Lease. If the City makes such repairs, Lessee shall pay to the City the cost thereof plus interest at the rate of twelve percent (12%) per annum on demand. The City shall not be responsible to Lessee for any loss or damage that may be caused to the Property or business of Lessee by reason thereof.

14. AUDITS. All of Lessee's records relating to the Property will be available for examination during normal business hours by the City, HUD, and/or representatives of the Comptroller General of the United States.

15. NEITHER PARTY AGENT, JOINT VENTURER OR PARTNER OF THE OTHER. Neither party hereto shall be construed to be an agent of, or a joint venturer or partner with, the other party.

16. BOND. Before the commencement of construction of any improvement on the Property exceeding \$5,000.00 in costs, Lessee will obtain and deposit with the City, a good and sufficient surety bond naming the City as an additional obligee, in a penal sum of not less than 100% of the cost for all labor and materials to be furnished and used for such construction, with a corporate surety authorized to do business in Hawaii guaranteeing (1) the full and faithful performance and completion of the construction contract and (2) completion of the construction free and clear of all mechanics' and materialmen's liens.

17. PROPERTY INSURANCE. During the Term, Lessee shall be responsible for any and all loss or damage to Lessee's personal property, including all goods, materials, supplies, tools, machinery, equipment, furnishings, improvements, or other property. Lessee waives any right of recovery against the City for any loss or damage to Lessee's property.

During the Term, subject to the provisions of Sections 10 and 11 above, should any of the buildings now or hereafter erected on the Property, sustain loss or damage, the City shall have the sole discretion to determine whether to repair, rebuild or replace such buildings. The City shall provide written notice to Lessee of such election, at which time Lessee shall, after payment to the City of all accrued rent and unpaid taxes and all other required payments, be relieved of any further obligation hereunder.

Lessee shall report the occurrence of any loss or damage to the Property to the City as soon as practicable within 48 hours after such occurrence.

18. LIABILITY INSURANCE. Lessee will procure and maintain at all times during the term of this Lease any and all insurance required under any federal, state or local law, statute, ordinance, or rules and regulations as may be applicable to Lessee's operations and activities hereunder, including but not limited to workers compensation insurance. In addition, Lessee shall procure and maintain Commercial General Liability (CGL) insurance covering claims arising out of Lessee's premises, operations, or independent contractors from bodily injury & property damage, products & completed operations, and personal & advertising injury liability, with minimum limits of:

General Liability		
	\$2,000,000	General Aggregate
	\$2,000,000	Products & Completed Operations Aggregate
	\$1,000,000	Personal & Advertising Injury
	\$1,000,000	Each Occurrence
Medical Expenses		
	\$5,000	Any One Person
Damage to Rented Premises	\$1,000,000	Each Occurrence

Lessee's policies of insurance shall name the City, its elected and appointed officials, employees and agents as additional insureds; contain a waiver of subrogation in favor of the City; provide that Lessee's insurance is primary coverage with respect to all insureds; contain a severability of interest clause providing that the insurance applies separately to each insured and that the policies cover claims or suits by one insured against another; and provide that the policy will not be cancelled, or terminated without 60 days prior written notice to the City. Lessee also acknowledges that the limits outlined above is provided as a matter of convenience and the City does not warrant that these limits are adequate to protect Lessee's or the City's interest or liabilities under the terms of this Lease, and Lessee's liability shall not be limited to these minimum limits.

Lessee will provide the City with current certificates of insurance for all policies and/or coverages required herein. The City reserves the right to review these requirements from time to time and require additional amounts or types of insurance.

19. **CITY'S COSTS AND EXPENSES.** Lessee shall pay to the City on demand all costs, including reasonable attorneys' fees, incurred by the City in enforcing any of the terms of this Lease, in remedying any breach of the terms of this Lease by Lessee, in recovering possession of the Property, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation commenced by or against Lessee to which the City shall be made a party without any fault on the City's part.

20. **INDEMNITY.** Lessee will indemnify and defend the City, and hold the City harmless against all claims whatsoever for: (a) failure of Lessee or its agents and employees to make any required disclosures in connection with the Property to users or any other person as required by law; (b) any misrepresentations made by Lessee or its agents and employees in connection with the Property to any person; (c) the failure of Lessee or its occupants, its clients, agents, employees, tenants, contractors, or subcontractors to observe all applicable laws and covenants as stated herein, (d) the failure of Lessee to observe and perform its obligations stated in this Lease; and (e) loss or damage, including property damage, bodily injury, and wrongful death, arising out of or in connection with the use or occupancy of the Property by Lessee or any client, tenant, occupant, or other person claiming by, through or under Lessee, or any accident or fire on the Property, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Property in a safe condition, or any other liability whatsoever on account of the Property, or on account of the acts or omissions of Lessee, its employees, agents, contractors, subcontractors, tenants, occupants, clients, or any other persons present upon the Property in connection with Lessee's use or occupancy thereof. In connection with the foregoing, the Lessee will reimburse the City for all its costs and expenses including but not limited to reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever within the Property at the sole risk of Lessee and hold the City harmless for any loss or damage thereto by any cause whatsoever.

21. **LIENS.** Lessee will keep the Property free of all liens and encumbrances arising out of its activities. Should any such lien or encumbrance attach to the Property then: (a) Lessee shall immediately notify the City of such attachment, and (b) Lessee shall pay the claim and cause the same to be satisfied and discharged of record, and if Lessee shall not pay the same and cause it to be satisfied and discharged of record promptly, City may, at its option, pay the same and any amount paid by the City shall become immediately due and payable by Lessee to City as additional rent. Lessee will indemnify and hold the City harmless against such lien or encumbrance and all expenses incurred by the City including but not limited to reasonable attorneys' fees.

22. **CONDEMNATION.** In case at any time or times during the Term, the Property or any part thereof shall be required, taken, or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the Property so required, taken or condemned shall at once cease and terminate, and Lessee shall not by reason thereof be entitled to any claim against the City or others for compensation or indemnity for the leasehold interest, and all compensation and damages payable for or on account of the Property or portion thereof shall be payable to and be the sole property of the City.

23. **TRANSFER BY CITY.** City may transfer, assign, or sell this Lease, or any interest in this Lease or the Property, at any time, with prior notice to Lessee, upon which transfer, assignment or sale, City shall be released of all liability hereunder. Lessee shall attorn to the transferee, assignee, or purchaser, and shall perform all obligations required to be performed by Lessee under this Lease after the date Lessee is notified of the transfer, assignment, or sale, as though the transferee, assignee or purchaser was the original Lessor named in this Lease.

24. **PROTECTION OF MORTGAGEE.** During the existence of any mortgage of this Lease, to which the City has consented in writing, the City will not terminate this Lease because of any default by Lessee if, within a period of 30 days after the City has mailed written notice to the mortgagee of intention to terminate this Lease at the last known address thereof, such mortgagee shall either cure such default or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the terms of this Lease until this Lease is sold upon foreclosure. Upon such undertaking, the City will not terminate this Lease within such further time as may be required by the mortgagee to complete the foreclosure process provided that such process is pursued and completed diligently. Ownership by the same person of both the fee and leasehold estates in the Property shall not affect the merger thereof without the prior written consent of any mortgagee to such merger.

25. **DEFAULT.** Lessee shall be in default of its obligations under this Lease upon occurrence of any of the following events (hereinafter called "events of default"):

- A. **Failure to Pay Rent.** Lessee's failure to pay rent or other charges required to be paid by Lessee under this Lease within ten days of its due date; or
- B. **Failure to Comply.** Lessee's failure to comply with any other provision of this Lease which Lessee is obligated to comply with within thirty days of written notice from City to Lessee of such non-compliance, provided that if the cure cannot be completed within thirty days, then so long as Lessee has commenced the action to comply and diligently prosecutes the same, Lessee shall not be in default; or
- C. **Abandonment.** Lessee's abandonment of the Property, for a period of 30 consecutive days or more; or
- D. **Assignment to Creditors.** Lessee's assignment of this Lease for the benefit of creditors; or
- E. **Writ of Execution.** Lessee's interest in this Lease, or any interest in it, being taken under a writ of execution; or

- F. Bankruptcy. Lessee's seeking voluntarily or the filing of an involuntary bankruptcy against Lessee, seeking the protection of the bankruptcy laws of the United States or any similar law for the relief of debtors; or
- G. Breach of Covenant. Lessee's breach of any covenant, warranty, promise or representation herein contained and the continuance of such breach for a period of thirty days after written notice to Lessee; or
- H. Misrepresentation. Any material representation or warranty of Lessee contained herein or any material representation to City concerning the financial condition or credit standing of either Lessee or any party ("Guarantor") obligated to City under any agreement guaranteeing performance of any of the obligations of Lessee referred to herein proves to be false or misleading, or City reasonably determines that its position as City is threatened by reason of a material adverse change in the financial condition or credit standing of either Lessee or of any Guarantor.

26. REMEDIES.

- A. Interest and Late Payment Charge. If Lessee shall be delinquent in payment of the rent or the payment of any other charge required to be paid by Lessee under this Lease, Lessee shall pay, with each overdue payment, interest on the overdue payment at the rate of twelve percent (12%) per year. In addition to interest, Lessee shall also pay to City a late fee equal to five percent (5%) of the overdue payment to cover City's administration costs of processing such overdue payment.
- B. Remedies Upon Default. Upon occurrence of any event of default, City may exercise any of the following remedies:
 - 1. Re-entry: Termination. City may elect to terminate this Lease, but only by specific written notice of its election to Lessee, and may terminate the rights of Lessee to this Lease and the Property, and may reenter the Property to take possession of it;
 - 2. Re-entry: No Termination. Without terminating this Lease, City may reenter the Property and occupy it and may, but is not obligated to, relet any portion or all of the Property for the account of Lessee; provided that City may terminate this Lease at any time after Lessee's default, even if City has relet any portion of the Property for the account of Lessee.
 - 3. Cure. City may but shall not be obligated to cure any event of default and to charge Lessee for the cost of effecting such cure.
- C. Exercising City's Remedies. Upon City exercising any of its above-listed remedies, Lessee agrees to the following:
 - 1. Removal of Persons and Property. If City reenters the Property, it may remove all persons from the Property by any lawful means available. City may also remove all property of Lessee from the Property, and may enforce its right against that property, or may store the property at the expense of Lessee, or may dispose of the property if Lessee does not reclaim the property within 30 days after City has re-entered the Property.

2. **No Termination.** City's re-entry into the Property or its action to obtain possession of the Property shall not be deemed to constitute a termination of this Lease, or a termination of Lessee's obligation to pay rent or any other charge required to be paid by Lessee under this Lease, or a termination of any other liability of Lessee under this Lease including but not limited to Lessee's liability for damages.
3. **Reletting.** If City elects to relet the Property to a replacement Lessee, with or without terminating this Lease, City may enter into an agreement with the replacement Lessee for such rent and on such terms as City in its sole discretion deems appropriate. City may repair or alter the Property to suit the purposes of the replacement Lessee or to enable City to relet the Property or any portion of the Property.
4. **Application of Rent.** City shall apply the rent and other payments received from the replacement Lessee, in the following order and priority: (1) to the costs incurred by City to recover possession of the Property, including but not limited to reasonable attorney's fees and costs; (2) to the costs incurred by City to relet the Property, including but not limited to the costs of repairs and alterations, and broker's commissions; (3) to the unpaid rent and other payments required to be paid by Lessee under this Lease. If there shall be a surplus, City may retain such surplus to pay subsequent amounts which become due and payable by Lessee under this Lease, and if there shall be any surplus at the expiration of this Lease, City shall pay such surplus to Lessee at the expiration of this Lease. If there shall be any deficiency between the rent and payments received from the replacement Lessee and the amount required to pay the items described in subparagraphs (1), (2), and (3) of this paragraph, Lessee shall be liable to City for such deficiency.
5. **Legal Action.** City may initiate legal action against Lessee at any time to recover amounts owed to City under this Lease, even though such action is initiated prior to termination of this Lease or prior to a final determination of amounts owed to City by Lessee. Initiating an action pursuant to this provision shall not be deemed a termination of this Lease and shall not preclude City from initiating subsequent actions against Lessee to recover any amounts due from Lessee.
6. **Additional Remedies.** If City terminates this Lease, then in addition to any other remedy available to City, City may recover from Lessee either (1) all damage sustained by City as a result of Lessee's default, and (2) the amount by which the total rent and other amounts payable for the remainder of the term of this Lease exceed the rent that City can be expected to receive for the Property for such period, together with the costs of recovering possession of the Property, the anticipated costs of reletting the Property, and reasonable attorney's fees and costs incurred by City.
7. **Remedies Cumulative.** The remedies available to the City are cumulative and not exclusive, and the exercise of any remedy by City shall not preclude its exercise of any other available remedies.
8. **Costs and Attorney's Fees.** City shall be entitled to recover from Lessee all costs incurred by City in enforcing any provision of this Lease which

Lessee is required to comply with, including but not limited to reasonable attorney's fees and costs.

27. SURRENDER; HOLDING OVER.

- A. Surrender. Upon expiration or earlier termination of this Lease, Lessee shall immediately vacate and surrender the Property to City, together with all improvements, additions and fixtures then on the Property, whether installed by City or by Lessee, including any air conditioning units or systems, all in good condition, ordinary wear and tear excepted; and free and clear of all encumbrances (including, but not limited to, all claims, liens, charges or liabilities); provided that City, at its option, may require Lessee to remove any or all improvements, additions and fixtures installed by Lessee in the Property, in which event Lessee shall do so and shall restore the Property to its original condition at the commencement of this Lease within seven days following the expiration or earlier termination of this Lease. Lessee shall remove all of its personal property before surrendering the Property and shall repair any damage to the Property caused thereby. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease. Personal property is defined as inventory, operating equipment or other property not affixed to the Property.
- B. Failure to Restore. If Lessee fails to complete the removal and the restoration in the manner and within the time specified, City may complete such removal and restoration in which event Lessee shall be liable to City for all costs incurred by City which amount shall be immediately due and payable after notice to Lessee by City of the amount due.
- C. Holding Over. If Lessee remains in possession of the Property after the expiration or earlier termination of this Lease without the consent of City, Lessee shall be liable (1) for two times the fair market rent for the Property, determined as of the expiration or earlier termination of this Lease, (2) for all other charges payable by Lessee pursuant to other provisions of this Lease, and (3) for all other damages City may sustain as a result of such wrongful holdover. Acceptance of rent or other payments by City from Lessee during any holdover period shall not be deemed to create a new tenancy in favor of Lessee, but to the contrary, City may initiate action against Lessee at any time to recover possession of the Property, and to recover all damages sustained by City as a result of Lessee's wrongful holdover.

28. DISSOLUTION OF LESSEE. In the event of the corporate dissolution of Lessee, the City may terminate this Lease.

29. HAZARDOUS SUBSTANCES. Lessee shall not cause, permit, or allow the storage, use, escape, disposal or release of any hazardous substances or materials in or about the Property by Lessee, Lessee's agents, employees, contractors, invitees or licensees, except in full compliance with all hazardous materials laws. Hazardous substances and materials shall include those described in the Hazardous Materials Laws. "Hazardous Materials Laws" shall include, but not be limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act and the Safe Drinking Water Act, the Hawaii Environmental Response Law, Hawaii Revised Statutes Chapter 128D, as well as any similar state and local laws and ordinances and regulations now or hereafter adopted, published and/or promulgated pursuant thereto as the same may be amended from time to time. If any lender or governmental agency shall ever require testing to ascertain whether or not there

has been any storage, presence or release of hazardous substances or materials, then the reasonable costs thereof shall be reimbursed by Lessee to the City upon demand as additional charges if such requirement applies to the Property. In addition, Lessee shall execute affidavits, representations and the like from time to time at the City's request concerning Lessee's best knowledge and belief regarding the presence of hazardous substances or materials on the Property. In all events, Lessee shall defend, indemnify and hold harmless the City, its employees, agents, successors and assigns from and against any claims, demands, actions, lawsuits, proceedings, losses, damages, liabilities, fines, penalties, judgments, awards, costs and expenses directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, removal or presence of hazardous substances or materials on or under or about the Property by Lessee or attributable to Lessee or Lessee's agents, employees, contractors, invitees or licensees, including, but not limited to any damages, the cost of clean up or detoxification of the Property and the preparation and implementation of any closure or remedial or other required plans and all reasonable costs and expenses incurred by the City in connection with such items including, but not limited to, attorneys' fees and costs. The foregoing covenants shall survive the expiration or earlier termination of this Lease.

30. **ADA COMPLIANCE.** As between the City and Lessee, Lessee shall be responsible for ensuring that the Property, all alterations and improvements in the Property, and Lessee's use and occupancy of the Property complies with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, *et seq.*), and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect therewith (the "ADA"). However, Lessee shall not make any such alterations or improvements except in accordance with the provisions of Sections 11 and 16.

31. **SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY.** All entities having a contract with the City (referred to in this Section as a "Contractor") must comply with the Revised Ordinances of Honolulu 1990, Chapter 1, Article 18 ("Article 18") on sexual harassment. All Contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the Contractor's business and includes the following:

- A. Prohibitions against an officer's or employee's sexual harassment of the following:
 - (1) Another officer or employee of the employer;
 - (2) An individual under consideration for employment with the employer; or
 - (3) An individual doing business with the employer;
- B. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under Subdivision a of the ordinance;
- C. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
- D. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
- E. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

- F. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
- G. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"
- H. Disciplinary action which may be imposed on an officer or employee who committed a prohibited act; and
- I. For a Contractor with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this section shall be in effect for at least the duration of the Contractor's contract with the City. The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by Article 18. Article 18 is on file and available for viewing in the Purchasing Division. Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii, 96813.

32. MISCELLANEOUS PROVISIONS.

- A. Amendment. The provisions of this Lease may be amended only by each party executing a subsequent written agreement which states each amended provision.
- B. Applicable Law. The provisions of this Lease shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.
- C. Authorization. Each party warrants to each other party that the individuals executing this Lease are authorized to do so. Lessee further represents and warrants that there are no restrictions, agreements, or limitations on its right or ability to enter into and perform the terms of this Lease.
- D. Binding Effect. Upon its execution by each party, this Lease shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Lease, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Lease shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.
- E. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Lease, the City reserves the right, at any time, to amend this Lease in order to assure compliance with all HUD, City and County of Honolulu, State of Hawaii and other federal statutes, laws and regulations. All such amendments shall be within the general scope of this Lease. The City shall provide all such amendments in writing to the Lessee. The Lessee agrees that it shall immediately take any and all reasonable steps to comply with such amendments.

- F. Consent: Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Lease is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.
- G. Construction. Each party named in this Lease acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Lease; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Lease; and (v) each party has agreed to be bound by the terms stated in this Lease following its review and obtaining advice.
- H. Counterparts. This Lease may be executed by the parties in counterparts. The counterparts executed by the parties named in this Lease and properly acknowledged, if necessary, taken together, shall constitute a single Lease.
- I. Dates. If any dates stated in this Lease fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.
- J. Defined Terms. Certain terms where they initially are used in this Lease are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Lease, unless otherwise specifically stated or clearly inappropriate in the context.
- K. Force Majeure. If any party is prevented from performing its obligations stated in this Lease by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Lease. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Lease by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Lease shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.
- L. Gender: Number. In this Lease, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.
- M. Independent Contractor/Non-Agency. The parties acknowledge that Lessee is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.
- N. Integration. This Lease contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Lease. Each party acknowledges that no person or entity made any oral or written representations on which a party has relied as a basis to enter into the agreement stated in this Lease which is not included as a provision in it.
- O. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Lease, the prevailing party shall

be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.

- P. No Drafter. No party shall be deemed to have drafted this Lease. No provision stated in this Lease shall be construed against any party as its drafter.
- Q. No Offer. The provisions stated in this Lease shall not bind any party until each party has executed it. The mere delivery of this Lease is not an offer.
- R. No Obligations to Third Parties. Unless there is a provision stated in this Lease to the contrary, the execution and delivery of this Lease shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.
- S. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.
- T. Notice. Any notice required or permitted by the provisions of this Lease to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated below. No other method of notice shall be effective.
- (1) CITY AND COUNTY OF HONOLULU:
Department of Community Services
Community Based Development Division
925 Dillingham Boulevard, Room 200
Honolulu, Hawai'i 96817
Attention: Director
- (2) HALE KIPA, INC.
615 Pi'ikoi Street, Suite 203
Honolulu, Hawai'i 96813
Attention: Deputy Chief Executive Officer
- U. Use of Public Buildings by Blind or Visually Handicapped Persons. Lessee shall ensure that any vending facilities on the Property, including but not limited to vending machines, shall be placed in compliance with Hawaii Revised Statutes Section 102-14 and the rules adopted by the State of Hawaii Department of Human Services to implement such statute.
- V. Paragraph Titles. The titles of provisions stated in this Lease are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Lease.
- W. Required Actions by the Parties. Each party named in this Lease agrees to execute the Lease and to diligently undertake the acts necessary to consummate the transaction contemplated by this Lease. Each party shall use its best efforts to consummate the transaction contemplated by this Lease.

- X. Severability. If any provision stated in this Lease subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Lease unless that effect is made impossible by the absence of the omitted provision.
- Y. Survival. Any representation and warranty stated in this Lease made by a party shall survive the termination of the agreement stated in this Lease, unless otherwise specifically stated.
- Z. Time is of the Essence. Time is of the essence with respect to Lessee's obligations under this Lease.

THE PARTIES have executed this Lease on _____, 20_____.

APPROVED AS TO FORM AND LEGALITY:

CITY AND COUNTY OF HONOLULU

By _____
Deputy Corporation Counsel
City and County of Honolulu

By _____
Director, Department of Budget and
Fiscal Services

APPROVAL RECOMMENDED:

HALE KIPA, INC.

Director, Department of Community Services

By _____
Its

Print Title: _____

Print Name: _____

ACKNOWLEDGMENT

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20____, before me
appeared _____ to me personally known, who, being by
me duly sworn, did say that _____ is the _____ of the
Department of Budget and Fiscal Services of the CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawaii, and that the seal affixed to the foregoing
instrument is the corporate seal of said municipal corporation, and that said instrument
was signed and sealed on behalf of said corporation by authority of its City Council, and
said _____ acknowledged the instrument to be the free
act and deed of said municipal corporation.

Notary Public, State of Hawaii

Printed Name _____

My commission expires: _____

ACKNOWLEDGMENT

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20____, before me appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____ of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii
Print name _____

My commission expires: _____

EXHIBIT A

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

Lot 7083, area 4,069 square feet, as shown on Map 578, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

TOGETHER with a non-exclusive perpetual easement for vehicular access over and through Lot 7102 as shown on said Map 578, and in, on, over, under and through Easement 3087 shown on said Map 578, for utility and other reasonable purposes.

Being a portion of the land described in Transfer Certificate of Title No. 421,440 issued to the Grantor herein.

SUBJECT, HOWEVER, to:

1. Terms and conditions contained in instrument dated February 17, 1989, recorded in said Bureau of Conveyances in Liber 22883, Page 224.
2. Terms and conditions contained in instrument dated November 3, 1989, filed in said Office of the Assistant Registrar as Document No. 1684310, and also recorded in said Bureau of Conveyances in Liber 23899, Page 199.
3. Covenants, conditions and restrictions set forth in Declaration of Covenants, Conditions and Restrictions dated October 25, 1991, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1862778, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-151535, as amended by instruments dated February 10, 1992, and January 30, 1992, filed in said Office of the Assistant Registrar as Document Nos. 1888370 and 1888371, respectively, and also recorded in said Bureau of Conveyances as Document Nos. 92-020281 and 92-020282, respectively, and as the same may be further amended from time to time.
4. Amendment to Conditions dated April 28, 1992, recorded in said Bureau of Conveyances as Document No. 92-068835, made by the City and County of Honolulu, a municipal corporation, by its Department of General Planning.

5. Second Amendment to Conditions dated October 5, 1992, recorded in said Bureau of Conveyances as Document No. 92-176379, made by the City and County of Honolulu, a municipal corporation, by its Department of General Planning.

6. Amendment to Design Standards of the West Loch Fairways Subdivision, dated January 14, 1994, filed in said Office of the Assistant Registrar as Document No. 2152684, and also recorded in said Bureau of Conveyances as Document No. 94-095075.

7. Easement 3075 (area 163 square feet) for the use and benefit of Lot 7082 as shown on Map 578, as set forth by Land Court Order No. 104859 filed on December 2, 1991.

8. Easement 3076 (area 96 square feet) for drainage purposes as shown on Map 578, as set forth by Land Court Order No. 104859 filed on December 2, 1991.

END OF EXHIBIT A

GROUP HOME MANAGEMENT AGREEMENT
HOME INVESTMENT PARTNERSHIPS
PROGRAM (HOME)

Lessee Name: HALE KIPA, INC.

Property Name: 91-1002 APA'A STREET, EWA BEACH,
HAWAI'I 96706

The Lessee agrees as follows:

1. **91-1002 APA'A STREET** shall be managed as a HOME-assisted group home rental project. The Lessee shall comply with all applicable HOME regulations and HUD's guidelines entitled "Compliance in HOME Rental Projects: A Guide for Property Owners" (hereafter "Guide"). (The Guide is available on the web at: https://files.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects_GuideforPropertyOwners.pdf).
2. This Agreement summarizes the main points in the aforementioned regulations and Guide, but does not substitute for them. If there is a conflict, the regulations and Guide take precedence over this Agreement.
3. The lessee shall manage the 91-1002 APA'A STREET in compliance with the HOME regulations for **five (5)** years as a group home.
4. A group home is defined as the following:

A GROUP HOME consists of housing occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the unit, and (except in the case of shared one bedroom units) separate private space for each family. A GROUP HOME may be used for elderly or disabled persons or minor children. Supportive services may be provided. A GROUP HOME may be a single family dwelling unit that is being used as a group home.
5. 91-1002 APA'A STREET has **one (1)** dwelling units total, ALL of which are considered HOME-assisted.
6. 91-1002 APA'A STREET's HOME-assisted units are (check one):

☒ fixed ☐ floating

If the HOME units are fixed, then the designated HOME units are listed as follows: **NOT APPLICABLE** (List each unit individually, by apartment number.

EXHIBIT B

7. If there is any conflict, the HOME regulations and guidelines take precedence over the State of Hawaii Residential Landlord-Tenant Code (Chapter 521, Hawaii Revised Statutes, as amended) (the "Hawaii Landlord Tenant Code").
8. While a transitional housing project may not be subject to the Hawaii Landlord Tenant Code, it is still wholly subject to the HOME regulations and the Guide.
9. HOME rental projects, including transitional housing projects and 91-1002 APA'A STREET, shall charge rent. The rent may be nominal. The Lessor may charge program or service fees; provided, however, that it charges for program or service fees separately from the rent.
10. The total cost to the tenant of rent plus utility costs plus any mandatory fees (including mandatory fees for parking, programs, food, or services) shall not exceed the HOME rent limits. HUD revises the HOME rent limits annually; the Lessee shall annually obtain and use the latest rent limits.

NOTE: The maximum rent for a bedroom in the Group Home is the current HUD Fair Market Rent for a single-family dwelling unit with the same number of bedrooms as the group home, divided equally between the numbers of bedrooms in the group home. For example the rent for one bedroom in a 6-bedroom group home for which the 2019 HUD HOME Fair Market Rents is \$4,720.00, will be \$4,720.00 divided by 6, or \$786.67.
https://files.hudexchange.info/reports/published/HOME_RentLimits_State_HI_2019.pdf
11. HOME rental projects, including 91-1002 APA'A STREET, may provide programs and services to their tenants.
12. HOME rental projects, including HOME transitional housing projects and 91-1002 APA'A STREET, may require tenants to participate in the programs and accept services as a condition of living in the project; however, before doing so, they must secure the City's prior written approval of any mandatory programs and services. (The City, in turn, must secure HUD's written approval of the programs and services.)
13. HOME transitional rental housing projects must provide supportive services; and they must secure the City's prior written approval of the services.
14. With the exception noted below, HOME transitional rental housing projects may require the tenants to accept services as a condition of living in the project.
15. HOME-assisted group homes for people with disabilities and HOME-assisted SROs for people with disabilities may require the disabled tenants to accept some services as a condition of living in the project; however, they may not require the disabled tenants to accept "disability-related services" as a condition of living in the project.
16. All HOME rental projects, including transitional housing projects and 91-1002 APA'A STREET, must execute lease agreements with tenants. A program agreement does not substitute for a lease agreement. If it so desires, Lessee may execute a separate program agreement with tenants in addition to a lease agreement.
17. The HOME lease agreement, including that for transitional housing projects and 91-1002 APA'A STREET, shall meet the specifications and contain the disclosures stated in the Guide. The City will be satisfied that the lease agreement complies if the Lessee uses the language in the attached sample "Addendum to Lease Agreement," attached as Addendum A to this Management Agreement.

EXHIBIT B

18. All HOME rental projects, including transitional housing projects and 91-1002 APA'A STREET, must comply with the HOME regulation at 24 Code of Federal Regulations (CFR) 92.253(c), which requires the Lessee to give 30 days written notice to any tenant before terminating the tenant's occupancy, regardless of any provision to the contrary in the Hawaii Landlord Tenant Code. The lease agreement shall contain a provision to this effect.
19. The lease agreement shall state whether any fee-based services are optional or required. The lease agreement must identify the amount of the additional fees or surcharges separately from the basic HOME rent for each tenant.
20. The lease agreement shall be for at least one year.
21. The Lessee shall maintain the property in accordance with the housing, plumbing, building, and fire codes in the Revised Ordinances of Honolulu 1990, as amended.
22. The Lessee shall inspect the units for compliance every year, using a checklist.
23. When selecting tenants, the Lessee shall date- and time-stamp applications and use a waiting list system with written procedures.
24. The Lessee shall maintain contacts with as many service agencies as possible to refer clients to the project.
25. The Lessee shall post the HUD Fair Housing poster in a site accessible and visible to tenants. The Lessee shall use the HUD Fair Housing Logo on its lease agreement and marketing materials.
26. Every five years, the Lessee shall update its Form HUD-935.2A, Affirmative Fair Housing Marketing Plan (AFHMP) – Multifamily Housing, and provide it to the City.
27. Every year, the Lessee shall provide the City a report on the race and ethnicity of all the tenants served during the program year.
28. Every year, the Lessee shall provide the City a report of the number households headed by single females and households headed by single males.
29. The Lessee shall certify the income of every household who enters the project. Only households with incomes at or below 60 percent of the Honolulu median income are eligible to enter into the project.
30. At least 20 percent of the HOME units must be occupied by tenants who have incomes at or below 50 percent of the Honolulu median income.
31. Every year, the Lessee shall fully re-certify every tenant's income.
32. When certifying incomes, the Lessee shall use the latest schedule of income limits published by HUD.
33. When certifying incomes, the Lessee shall select one definition of income from those listed below and apply it consistently to all households:

X Section 8

EXHIBIT B

___ IRS Form 1040
___ U.S. Census long form

34. Every year, the Lessee shall provide the City with a 12-month cash flow that shows the revenues and expenses of the project. If audited financial statements and audit reports available, the Lessee shall provide those to the City.
35. Every year, the Lessee shall provide the City with any insurance certificates required in its contract.
36. Throughout the year, the Lessee shall maintain the HOME Rental Project Compliance Report using an Excel spreadsheet, in a form that is specified by or otherwise acceptable to the City, and provide this report to the City annually. Such a form attached as Attachment B to this Management Agreement.

Lessee Name: HALE KIPA

By _____ Its _____
Signed name

Printed name

Date: _____

EXHIBIT B

B4

Addendum to Lease Agreement

HOME Investment Partnerships (HOME) Program HOME-Assisted **GROUP HOME** ("Property") Management and Monitoring Requirements

During the term of the lease agreement, the Project must be used and managed as a GROUP HOME in a manner consistent with all applicable HOME program regulations and guidelines. Important HOME affordability requirements, include, but are not limited to, the provisions described below:

A. The Property must comply with the following, non-exhaustive list of HOME regulations and other guidelines:

24 Code of Federal Regulations (CFR) 92.203 Income determinations (definition of "annual income" and how to determine income eligibility)

24 CFR 92.216 Income targeting; Tenant-based rental assistance and rental units.

24 CFR 92.251 Property standards

24 CFR 92.252 Qualification as affordable housing; Rental housing (target groups and rent rates)

24 CFR 92.253 Tenant protections and selection (including lease requirements in subsections (a) and (b))

"Compliance in HOME Rental Projects: A Guide for Property Owners," HUD, January 2009 (hereafter, "Guide")

This Addendum summarizes the above HUD regulations and guidelines that apply generally to HOME rental projects, generally to Single Room Occupancy projects, and specifically to this Project. It is not a substitute for these HUD regulations and guidelines, and it is not exhaustive. If there is any conflict between the regulations and pronouncements and this Addendum, the regulations and pronouncement will prevail.

B. Affordability Period:

The owner shall manage the Property in compliance with the HOME regulations for **FIVE (5) years**.

C. Definition of GROUP HOME.

A GROUP HOME consists of housing occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the unit, and (except in the case of shared one bedroom units) separate private space for each family. A GROUP HOME may be used for elderly or disabled persons or minor children. Supportive services may be provided. A GROUP HOME may be a single family dwelling unit that is being used as a group home.

ADDENDUM A

D. Fixed or Floating Units (in multi-funded properties):

1. The Property's HOME-assisted units are (check one):

X fixed

 floating

2. If the HOME units are fixed, then the designated HOME units are listed as follows: **NOT APPLICABLE** (List each unit individually, by apartment number.
3. If the HOME units float, and if the HOME units become temporarily non-compliant with the HOME regulations because of the occupant's increase in income, the Owner may redesignate non-HOME but potentially compliant units as HOME units to restore the correct balance of HOME to non-HOME units.

E. Property Standards Requirements.

1. The Owner shall maintain the Property in accordance with the City's housing codes, which are published in the Revised Ordinances of Honolulu 1990, as amended available on the City's website at <https://www.honolulu.gov/cms-ocs-menu/site-ocs-sitearticles/839-table-of-contents.html>, as follows:

Chapters 16 & 18	- Building Code
Chapter 17	- Electrical Code
Chapter 19	- Plumbing Code
Chapter 20	- Fire Code
Chapter 21	- Land Use (permits)
Chapter 27	- Light and sanitation

2. The Owner shall inspect the units annually for compliance with these standards.
3. The Owner shall file the inspection reports as evidence that the unit meets the standards.

F. Tenant Selection Procedures (24 CFR 92.253(d))

1. The Owner of must adopt written tenant selection policies and criteria that:
- a. Are consistent with the purpose of providing housing for very low-income and low-income families;
 - b. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
 - c. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - d. Give prompt written notification to any rejected applicant of the grounds for any rejection.

ADDENDUM A

2. The Owner shall comply with Federal regulations pertaining to affirmative marketing, fair housing, and equal opportunity (Source: 24 CFR 1.4 and 24 CFR 92.351).
 - a. In general, the Property must serve all persons without regards to race, color, national origin, religion, sex, handicap, or familial status.
 - b. No person shall be denied the benefits of the Property because of familial status, age, or disability.
 - c. The HUD Fair Housing logo shall be placed on the Property's housing application forms, brochures, advertisements, and rental agreements. The HUD Fair Housing poster shall be displayed in the Project's administrative office.
 - d. The Owner shall provide the City with a completed and updated HUD Form 92243-PRA Affirmative Fair Housing Marketing Plan. The Owner must actively market and reach out to all persons, especially those persons that, for various reasons, are least likely to apply. Special needs housing (e.g., transitional housing for the homeless or abused spouse) is not exempt from these regulations.
 - e. The Owner shall annually complete and provide to the City Form HUD-27061 - Race and Ethnic Data Reporting Form.
 - f. The Owner shall track and keep records of the number households headed by single females and households headed by single males annually.

G. Income

1. To be eligible to occupy a bedroom in the GROUP HOME, a tenant's household income must not exceed 60% of the Honolulu median income. If the tenant is a minor, then the household income of the tenants' guardian or parents must not exceed 60% of the Honolulu median income.
2. Definition of income.
 - a. If the rents in the Project are based on the tenants' ability to pay, e.g., the tenant never pays more than 30% of income for rent, then the Lessee *must* use the Section 8 definition of income and calculate the tenants' *adjusted income** as described below. (see <https://www.hudexchange.info/incomecalculator/dashboard/?display=login&returnURL=https%3A%2F%2Fwww%2Ehudexchange%2Einfo%2Fincomecalculator%2Fdashboard%2F>)
 - b. However, if the rents in the Project are *not* based on the tenants' ability to pay, then the Lessee may choose among three definitions of income stated in 24 CFR 92.203.

___ Section 8

ADDENDUM A

___ IRS Form 1040

___ U.S. Census long form

3. Frequency of full income certification.

The managing agent shall certify incomes of tenants fully using the method prescribed in 24 CFR 92.203(a)(1)(i) every year.

4. * To calculate **adjusted income**, use the HOME income calculator at the following website:

<https://www.hudexchange.info/incomecalculator/dashboard/?display=login&returnURL=https%3A%2F%2Fwww%2Ehudexchange%2Einfo%2Fincomecalculator%2Fdashboard%2F>

or other approved HUD calculators.

This website contains information such as"

"*Adjusted income*" is defined as the households' "annual (gross) income" that you certify annually, minus up to five additional deductions.

Determine if the household qualifies as "elderly", "disabled", or "family". Then, apply the following deductions to these households regardless of the definition of "annual (gross) income" that was initially used to determine their eligibility. The deductions are:

Elderly or disabled household deductions,
Dependent deductions,
Child care expenses deductions,
Medical expenses deductions, and,
Disability assistance expenses deductions

Use the website to learn how each deduction is applied when calculating adjusted income.

H. Rents

1. The maximum rent for a bedroom in the GROUP HOME is the current HUD Fair Market Rent for a single-family dwelling unit with the same number of bedrooms as the group home, divided equally between the numbers of bedrooms in the group home. For example the rent for one bedroom in a 4-bedroom group home in the 96706 zip code, for which the 2020 HUD Small Area Market Fair Market Rents is \$3,631.00, will be \$3,631.00 divided by 4, or \$907.75.
https://files.hudexchange.info/reports/published/HOME_RentLimits_State_HI_2019.pdf

NOTE: Live-in supportive service provider bedrooms are not counted in calculating tenants' rent. For example, if one bedroom of a four-bedroom unit is occupied by a service provider, the maximum unit rent is the FMR for a three-bedroom unit.

ADDENDUM A

2. The HOME rents must include all utilities. If tenants pay any utilities, the Lessee shall establish a utility allowance or adopt the current Section 8 utility allowance and credit it to the tenant.
3. If a tenant's income rises to >80%, then the tenant **must** pay as rent 30 percent of the household's *adjusted income** (see above); provided, however, that:
 - a. If the unit is a low-income housing tax credit (LIHTC) unit as well as a HOME unit, then the rent may not exceed the rent prescribed in the LIHTC program; and
 - b. If the unit is in a floating HOME unit Property, then the rent may not exceed the market rent for comparable, unassisted units in the neighborhood; and
4. Any rent changes must be in accordance with the terms of the GROUP HOME's rental agreement.

I. Rental Agreement

1. The Property must execute a rental agreement with tenants. **Note that program service agreements and personal responsibility agreements are not rental agreements** ("Compliance in HOME Rental Projects: A Guide for PJs," HUD January 2009, page 66).
2. The rental agreement with the tenant may not contain any of the prohibited terms listed in 24 CFR 92.253.
3. Termination of tenancy. A Lessee may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. (Source: 24 CFR 92.253(c).)

I. Reports.

1. The Lessee shall maintain a HOME Rental Project Compliance Report using an Excel spreadsheet. This Report is attached to this Addendum as Exhibit A. The Lessee shall transmit this Report to the City annually. It should show all the tenants that the Property served over the Property's fiscal year, not just those tenants that are currently occupying the units.
2. The Lessee shall complete and annually transmit to the monitoring agent Form HUD-27061, Race and Ethnicity Reporting Form. Should a fair housing complaint ever arise, this form will enable an investigator to determine if there is or has been a pattern of discrimination.
3. The Lessee shall annually transmit to the City the results of any third party audit of the Group Home.

ADDENDUM A

- a. If the audit does not break out the Group Home separately, the Lessee shall also transmit the Property's unaudited financial statements in addition to the audited statements. The financial statements should enable the monitoring agent to determine the amounts in the Group Home's reserve accounts.
- b. If the Group Home received over \$500,000 in Federal aid that year, then the Group Home must undergo a Single Audit (formerly known as an A-133 Audit).
- 4. The Lessee shall annually transmit to the City an annual program report in a form specified by the City.
- 5. The Lessee shall annually transmit to the City any other documents that are required by the agreements between the Lessee and the City, e.g., insurance certificates.

K. Files and Records

- 1. The Group Home's tenant origin files should contain:
 - a. In a multi-funded project, a note whether this is a HOME unit. Each file should enable the reviewer to identify if the unit is currently a HOME unit and its past history as a HOME or non-HOME unit.
 - b. Evidence that the unit was inspected in accordance with the appropriate housing quality standards.
 - c. Evidence that the incomes of each unit's successive tenants were documented and certified in accordance with the HOME regulation at 24 CFR 92.203.
 - d. Documentation as to each unit's rent.
 - e. Copy of each tenant's rental agreement.
- 2. The Lessee should keep on file:
 - a. Evidence that the Property filed Form HUD-92243-PRA Affirmative Fair Housing Marketing Plan; and evidence that the plan was reviewed every five years.
 - b. Evidence of marketing and outreach to the Property's target groups.
 - c. Copies of Form HUD-27061 -- Race and Ethnicity Reporting Form for each year.
 - d. Records of the number of households headed by single females and single males for each year.
 - e. Copy of the tenant selection policy and procedures, including policy and procedures for administering waitlists. These policies and procedures should meet the specifications of 24 CFR 92.253(d).

ADDENDUM A

- f. Copies of any brochures and handouts that the managing agent distributes to applicants. These materials should:
 - i. Disclose and explain the HOME rules that directly affect the tenants.
 - ii. Display the fair housing logo.
 - g. Copies of the agreements between the City and the owner.
 - h. A note as to any utility allowances and how they were determined.
 - i. Copies of HOME Rental Project Compliance Report for each year.
 - j. Copies of any insurance certificates required by agreements between the owner and the City.
- I. Inspection Schedules (24 CFR 92.504(d))
- During the period of affordability, the City will perform on-site inspections of the Group Home to determine compliance with the above requirements no less than:
- 1. Every three years for projects containing 1 to 4 units;
 - 2. Every two years for projects containing 5 to 25 units; and
 - 3. Every year for projects containing 26 or more units.

ADDENDUM A

NEED ATTACHMENT 1 TO ADDENDUM A
2019 HUD* ADJUSTED HOME INCOME LIMITS*

SAMPLE

ADDENDUM A

NEED ATTACHMENT 2 TO ADDENDUM A
2019 HUD "HOME PROGRAM RENTS"

SAMPLE

ADDENDUM A

HOME MONITORING FORM
PROJECT COMPLIANCE REPORT: GROUP HOME
 Project Name: _____
 Owner Name: _____
 Reporting Period: from: _____ to: _____
 Reviewer: _____ Date: _____

[illegible]

A10

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 20-169

Introduced: 07/09/20 By: IKAIKA ANDERSON – BY REQUEST Committee: BUDGET

Title: RESOLUTION AUTHORIZING THE LEASE OF CITY PROPERTY TO HALE KIPA, INC. FOR SPECIAL NEEDS HOUSING UNDER SECTION 28-3.5, REVISED ORDINANCES OF HONOLULU (ROH).

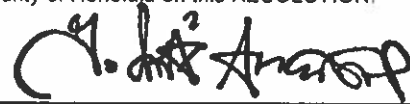
Voting Legend: * = Aye w/Reservations

07/15/20	BUDGET	CR-177 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION. 4 AYES: ELEFANTE, MANAHAN, MENOR, WATERS. 1 EXCUSED: PINE.
08/19/20	COUNCIL	CR-177 AND RESOLUTION 20-169 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI, WATERS.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN I. TAKAHASHI, CITY CLERK



IKAIKA ANDERSON, CHAIR AND PRESIDING OFFICER